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10/804,938	03/19/2004	John Link	10031165-1	8132

7590 06/30/2009  
AGILENT TECHNOLOGIES, INC.  
Legal Department, DL 429  
Intellectual Property Administration  
P.O. Box 7599  
Loveland, CO 80537-0599

EXAMINER
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CROW, ROBERT THOMAS

ART UNIT	PAPER NUMBER
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1634

MAIL DATE	DELIVERY MODE
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06/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN LINK,  
CLAUDIA A. ROBBINS,  
BARRY E. BOYES, and  
RHONDA TAYLOR

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Application No. 10/804,938  
Technology Center 1600

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Mailed: June 30, 2009

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Before DELORES LOWE, *Review Team Paralegal*  
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on April 23, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

On February 25, 2008, the examiner mailed a communication acknowledging receipt of Appellants' Reply Brief, dated February 4, 2008. A review of the Response to Reply Brief reveals that the examiner did not provide proper acknowledgment. The comments made by the examiner would constitute a Supplemental Examiner's Answer.

In accordance with MPEP 1207.05:

Every supplemental examiner's answer must be approved by a Technology Center (TC) Director or designee. The examiner may furnish a supplemental examiner's answer in response to any one of the following:

1. (A) A reply brief that raises new issues. The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a reply brief. See 37 CFR 41.43(a)(2). Appellant may file another reply brief in response to the supplemental examiner's answer within two months from the mailing of the supplemental answer. See MPEP § 1208.
2. (B) A remand by the Board for further consideration of a rejection under 37 CFR 41.50 (a). See MPEP § 1211.01. In response to a supplemental examiner's answer that is written in response to a remand by the Board for further consideration of a rejection, appellant must either file: (1) a reply under 37 CFR 1.111 to request that prosecution be reopened; or (2) a reply brief to request that the appeal be maintained, within two months from the mailing of the supplemental examiner's answer, to avoid *sua sponte* dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding.

Examiner may include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board for further consideration of a rejection. See MPEP § 1207.03.

3. (C) A remand by the Board for other purposes that are not for further consideration of a rejection under 37 CFR 41.50(a) . The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a remand by the Board, unless the remand is for further consideration of a rejection under 37 CFR 41.50(a) (see item B above). Appellant may file a reply brief with two months from the mailing of the supplemental answer.

A review of the Response to Reply Brief reveals that the examiner did not obtain proper approval.

Accordingly, it is

ORDERED that the application is returned to the Examiner for:

- 1) proper acknowledgment of the Reply Brief is required and/or appropriate consideration of the Reply Brief dated February 4, 2008; and
- 2) for such further action as may be appropriate.

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